MT LEGISLATIVE HISTORY

Chapter 682 1991

Bill H 24 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary

Hearing Date(s) _____ ___C

1/14 ✓C

1-17 ✓C

_____ ___C

Date Out 1/17 ✓C

S. Committee on Judiciary

Hearing Date(s) _____ ___C

1/30 ✓C

_____ ___C

_____ ___C

2/14 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/11	TRANSMITTED TO GOVERNOR		
3/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 67	EFFECTIVE DATE: 3/13/91	

HB 24 INTRODUCED BY CODY
ALLOW CONSIDERATION OF AGE, MARITAL STATUS, AND RELIGION IN ADOPTIONS

12/27	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/14	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/21	2ND READING PASSED	94	4
1/23	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
1/24	REFERRED TO JUDICIARY		
1/24	FIRST READING		
1/30	HEARING		
2/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/16	2ND READING CONCURRED	39	10
2/18	3RD READING CONCURRED	38	12
	RETURNED TO HOUSE WITH AMENDMENTS		
3/09	2ND READING AMENDMENTS CONCURRED	87	4
3/11	3RD READING AMENDMENTS CONCURRED	97	2
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 682	EFFECTIVE DATE: 7/01/91	

HB 25 INTRODUCED BY CODY
REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS

12/27	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/14	HEARING		
1/15	COMMITTEE REPORT—BILL PASSED		
1/17	2ND READING PASSED	92	7
1/19	3RD READING PASSED	91	1
	TRANSMITTED TO SENATE		
1/21	REFERRED TO JUDICIARY		
1/21	FIRST READING		
1/30	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	48	0
2/11	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 683	EFFECTIVE DATE: 7/01/91	

HB 26 INTRODUCED BY CODY
REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS

12/27	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/14	HEARING		

HOUSE BILL NO. 24

INTRODUCED BY CODY

IN THE HOUSE

DECEMBER 27, 1990	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
JANUARY 18, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 19, 1991	PRINTING REPORT.
JANUARY 21, 1991	SECOND READING, DO PASS.
JANUARY 22, 1991	ENGROSSING REPORT.
JANUARY 23, 1991	THIRD READING, PASSED. AYES, 93; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 24, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 15, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 18, 1991	THIRD READING, CONCURRED IN. AYES, 38; NOES, 12.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 9, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 11, 1991	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 24

INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE NONARBITRARY CONSIDERATION IN ADOPTION PROCEEDINGS OF RELEVANT INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED: AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Adoption policy -- best interest of child standard -- factors to be considered.** (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection

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INTRODUCED BILL
HB 24

includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of natural parents relating to the age, marital status, or religious beliefs of adoptive parents.

Section 2. Section 49-1-102, MCA, is amended to read:

"49-1-102. **Freedom from discrimination.** (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right ~~shall~~ must include but not be limited to:

~~(1)~~(a) the right to obtain and hold employment without discrimination; and

~~(2)~~(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 3. Section 49-2-308, MCA, is amended to read:

"49-2-308. **Discrimination by the state.** (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

~~(1)~~(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

~~(2)~~(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

~~(3)~~(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article

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VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 4. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services,

facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 5. Section 49-3-205, MCA, is amended to read:

"49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

NEW SECTION. **Section 6.** Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [section 1].

NEW SECTION. **Section 7.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8.** **Effective date.** [This act] is effective July 1, 1991.

-End-

CHAIRMAN--BILL STRIZICH
SECRETARY-JEANNE DOMME
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0024	12/27	1/14		PASS AS AMENDED		1/18
CODY, DOROTHY			ALLOW CONSIDERATION OF AGE, MARITAL STATUS, AND RELIGION IN ADOPTIONS			
HB0025	12/27	1/14		DO PASS		1/15
CODY, DOROTHY			REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS			
HB0026	12/27	1/14		PASS AS AMENDED		1/21
CODY, DOROTHY			REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS			
HB0036	12/27	1/08	reconsidered, tabled 1/10	TABLED ON 01/08		
CROMLEY, BRENT			EXEMPT PARALEGALS AND LEGAL ASSISTANTS FROM REGISTRATION AS PROCESS SERVERS			
HB0042	12/29	1/10		DO PASS		1/11
COBB, JOHN			DISCRETIONARY STATEMENT OF INTENT FOR BILL GRANTING RULEMAKING AUTHORITY			
HB0043	12/29	1/10		PASS AS AMENDED		1/11
COBB, JOHN			CLARIFY GRANDPARENT VISITATION RIGHTS FOR CHILDREN IN FOSTER CARE			
HB0069	12/31	1/11		PASS AS AMENDED		1/12
WHALEN, TIM			REVISE ESTABLISHMENT, NUMBER, SALARY, ELECTION OF MUNICIPAL COURT JUDGES			
HB0070	1/03	1/17		PASS AS AMENDED	APPROPRIATIONS	1/21
STRIZICH, BILL			STATE JAIL STANDARDS			
HB0071	1/03	1/17		DO PASS		1/21
STRIZICH, BILL			REQUIRE COURTS TO ORDER FINANCIALLY ABLE INMATES TO PAY INCARCERATION COSTS			
HB0072	1/03	1/17		PASS AS AMENDED		1/18
RICE, JIM			EXPEDITE CRIMINAL PROSECUTION			
HB0073	1/03	2/07		TABLED ON 02/08	APPROPRIATIONS	
RICE, JIM			APPROPRIATE PORTION OF LOTTERY PROCEEDS TO FUND JUVENILE DETENTION PROGRAMS			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 14, 1991, at 9 a.m.

ROLL CALL

Members Present:
Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB #24
ALLOW CONSID. OF AGE, MARITAL STATUS, & RELIGION IN ADOPTIONS

Presentation and Opening Statement by Sponsor:

REP. CODY, HOUSE DISTRICT 20, handed out a the amendment to HB #24 and gave a short history on how the bill came about for the new committee members. EXHIBIT 1. This bill gives the natural birth mother the constitutional right to choose the adoptive parents of her child. Under the ruling as it is now, the department is not allowed to use arbitrary standards to fix age

limits or marital restrictions at any stage of the adoption process. This ruling promotes individual adoptions without any regulation. In the initial eligibility, they could consider age or marital in the adoption proceedings, but it is forbidden in the final placement stage. This bill enables us to consider all best possible interests of the child. It is our public policy statement on allowing the department to consider such factors as age and marital status.

Proponents' Testimony:

Bill Driscoll, Lawyer, stated the concern about the legislation as originally issued is that it applies the same standard to private agencies as to The Department of Family Services in making adoption placements. We want to encourage natural mothers to utilize the Department of Family Services or licensed child placing agencies instead of going out on their own to find adoptive parents for her child. We should recognize the adoptive placements that are made through The Department of Family Services or a licensed child placing agencies, are the adoptive placements that take place in public regulated arenas.

Kenneth Gjerde, Director of Lutheran Social Service in Montana, stated that over 50% of his agencies funding comes through religious related sources and other agencies receive support direct from their church body or private funding. This support follows the religious beliefs of the people that are willing to give it. Their beliefs are what shape our policies. Our policies are basically traditional values regarding marriage stability and that the child should be raised with the religious convictions as our church. If we cannot continue these policies, we will end up going out of business.

Mark Ricks, LDS Social Services Private Adoption Agency, stated generally when a birth mother comes to us she is concerned and needs counselling. They are interested in their child welfare. We need to give birth parents more options so our services can be in the best interest to both families. We believe private agencies provide an important service to the citizens of Montana.

Karen Northey, Director of Florence Critendon Home, stated the adoption process has changed throughout the years. Young women now have more choices in their life. They can pick the type of families they want for their children so they don't feel like they are abandoning their child. It is important for them to choose religion, age, and in what area they will live. These are very important to a girl, and for us not to allow that and revert back to years ago when the girl didn't know whether they had a girl or a boy, we would be going backwards instead of forward.

Linda Sargent, Assistant Director Montana Right to Life, stated HB #24 is in the best interest of the baby, the birth parent, and the adopted parent.

Marilyn McKibben, gave testimony about a case in which a girl had decided to give up her baby for adoption and wanted to know more about the process. She wanted to choose who the child would be adopted by, in what area the child should live and the religion of the adoptive parents. All these options are extremely important to a birth mother giving up her child. She asked that the committee look from the mother of the child's point of view.

Rebecca Jones, Director of Adoption Services, Shodair Hospital, stated she has seen a lot of changes in adoption. The birth mother only had the choice of whether the child would live in a rural or a city area and choice of religion, but did not let them choose a specific type of family. Most birth mothers are only able to get through the adoption process if they are comfortable with the adoptive parents. This is because society has taken away alot of the other barriers. They now have much more support financially. If they do not have something to give them a choice in the matter, they are saying they will seek out adoptive parents on their own accord. We are not saying people cannot adopt if they are of a certain religion or if they are a certain age. We are saying we would like to have the opportunity considering those options when it comes to the birth parents.

Betty Bay, Department of Family Services Adoption Specialist, stated she is in support of HB #24. EXHIBIT 2

Opponents' Testimony:

Scott Crichton, Executive Director/Lobbyist of the American Civil Liberties Union, stated although this bill is a well intentioned draft it promotes legalized discrimination on the basis of age, marital status and religion or lack of religion in adoption proceedings. This bill gives natural parents the power to limit the adopted parents regarding age, religion or marital status.

Faye Bergar, a Helena resident, stated she and her husband are wanting to adopt a child. They are being discriminated against because of her husband's age. They are financially stable, own their own home close to the schools, and live in a loving, giving environment. They object to this bill which discriminates against age, religion and marital status. Adoption should be in the best interest of the child.

Questions From Committee Members:

REP. TOOLE asked **Mr. Driscoll** if he could approach the legal background of this bill? **Mr. Driscoll** said the primary purpose of this bill was to deal with the licensing of private adoption agencies and if they should impose the same sets of standards as the Department of Family Services. This legislation contains language that the Dept. of Family Services and Human Rights are satisfied and have not made any changes with that part of the bill.

REP. TOOLE asked Mr. Driscoll if he could address those concerns regarding the decision making process? Mr. Driscoll stated that the State allows our agencies to make our own policies. This legislation is an attempt to help the agencies get back into placing infants with adopted parents. We think it is important to effectuate the natural mothers intent as much as possible. If not, you encourage the adoption to take place out side of the agencies. If you are going to license agencies, they need to be able to go forward and help them deal with the birth mother with the best interest of the child in mind.

REP. BOHARSKI asked Bill Driscoll what level of decision do we have to make on a rational basis? Mr. Driscoll said that when a child has established a level of religious practice then they should be with a family that will continue that. But in terms of an infant, it is questionable as to how far you will go to accommodate the birth parents and their particular beliefs.

REP. BROWN asked REP. CODY if the ACLU was taken into consideration during the drafting of this bill? REP. CODY said she didn't believe so. Mr. Crichton said no.

REP. BROWN asked Ann MacIntyre if the Human Rights Commission is neutral on this legislation? Ms. Macintyre said no they do not take position on the bill. REP. BROWN asked where was the Human Rights Commission during the development of this bill? Ms. MacIntyre stated the Commission was asked to provide information and comment on the draft. Due to the press of time, we were unable to get our comments to the draft. REP. BROWN asked if she shares the same concerns as the opponents? Ms. MacIntyre stated she does share some of their concerns from a personal standpoint. I do think that any consideration of religion by a state agency is subject to scrutiny. The private religious agencies have a right to religious freedom based on the first amendment.

REP. MESSMORE asked Kenneth Gjerde if social service agency consider the age ceiling and what is the age ceiling? Mr. Gjerde said for his agency the limit is 44 years of age. REP. MESSMORE then asked Mr. Gjerde if his group would discriminate against non-main line religious people wanting to adopt? Mr. Gjerde said yes they would. We would refer those people who would not fall within our religious guideline policy to the state.

REP. BROOKE asked Betty Bay if this legislation passes as amended, will the Department of Family Services then be back in the adoption business. Ms. Bay said yes. REP. BROOKE then asked Ms. Bay if it does pass, would that mean you would continue to adopt babies into single parent homes or couples other than heterosexual parents. Ms. Bay said they feel that they have to find the best home possible for an infant.

REP. WHALEN asked what the role of the Department of Family Services and the role of the Private Adoption Service Agencies in the adoption process? Mr. Driscoll stated if you do a direct

private agency without the BFS agency involved, the natural parent primarily choose the adoptive couple and deals with them directly. The private agencies follow the Montana Uniform Parenting Act. This means a natural mother comes to an agency like Catholic Social Services at some point in her pregnancy seeking counselling in a very broad range. Once a mother focuses in on a choice the council is geared toward that end result. At the time the mother gives birth to the child and relinquishes custody of the child for adoption, she relinquishes to Catholic Social Services. Catholic Social Services then go to court and petition the termination of the birth mother's rights and gets consent from the father also.

REP. WHALEN asked **Mr. Driscoll** if the legal proceeding by a private agency getting custody of a child is separate from the legal proceeding for adoption of the child? **Mr. Driscoll** said yes they are separate.

REP. LEE asked **Betty Bay** if she could provide the committee with the rational basis for the age cut off. **Ms. Bay** said the department did not have a age limit and they follow the usual child parenting range. **REP. LEE** then asked **Ms. Bay** if she would be opposed to a more open ended age limit. **Ms. Bay** said age is a big concern when talking about adopting an infant.

REP. LEE asked **Marilyn McKibben** the same question. **Ms. McKibben** stated they have to consider age because the agencies decision is based on the best interest of the child. If a birth mother where to request an adopted couple to be older, then the request will not be declined. Our agency does not have an age restriction because of these factors.

Closing by Sponsor: NONE

HEARING ON HB #25
REQUIRE 72-HR RELINQUISHMENT PERIOD IN ADOPTIONS

Presentation and Opening Statement by Sponsor:

REP. CODY stated this bill gives the birth mothers 72 hours before making the final decision of relinquishing their parental rights.

Proponents' Testimony:

Marilyn McKibben, stated she would like to go on record as a proponent for HB #25.

Betty Bay, Department of Family Services Adoption Specialist, gave written testimony in support of HB #25. EXHIBIT 3. She added that the Indian Child Welfare Act requires 10 days before relinquishing their parental rights.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 1-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL STRIZICH, CHAIRMAN	✓		
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓	✓	
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		

EXHIBIT 1
DATE 1-14-91
HB 24

Amendments to House Bill No. 24
White Reading Copy

Requested by Representative Cody
For the Committee on Judiciary

Prepared by Valencia Lane
January 12, 1991

1. Page 1, line 19.
Following: "proceedings"
Insert: "and to encourage the placement of children for adoption by the department or licensed child-placing agencies"

2. Page 1, line 24 through page 2, line 3.
Strike: subsection (3) in its entirety

3. Page 2, line 4.
Strike: "(4)"
Insert: "(3)(a)"
Strike: "All"
Insert: "In placements of children for adoption by the department, all"

4. Page 2, line 12.
Strike: "(a)"
Insert: "(i)"

5. Page 2, line 15.
Strike: "(b)"
Insert: "(ii)"

6. Page 2, line 17.
Strike: "(c)"
Insert: "(iii)"

7. Page 2, line 20.
Strike: "(5)"
Insert: "(b)"

8. Page 2, lines 21 and 22.
Following: "department" on line 21
Strike: remainder of line 21 through "are" on line 22
Insert: "is"

9. Page 3, line 5.

Following: line 4
Insert: "(4) In placements of children for adoption by a licensed child-placing agency, the agency may act pursuant to its policies, consistent with the best interests of the child."

10. Page 3, line 17.
Following: "consideration"
Insert: "by the department of family services"

11. Page 3, line 19.
Following: "(1)"
Insert: ", nor does it prevent a licensed child-placing agency from placing children for adoption as provided in [section 1(4)]"

12. Page 5, line 5.
Following: "consideration"
Insert: "by the department of family services"

13. Page 5, line 18.
Strike: "This subsection does not prevent the"
Insert: "The"

14. Page 5, line 19.
Following: "services"
Strike: "from"
Insert: "may not deny"
Following: "licensing"
Insert: "to"

15. Page 5, line 20.
Strike: "nonarbitrary"

16. Page 5, line 21.
Strike: "relevant"

17. Page 6, line 23.
Following: "consideration"
Insert: "by the department of family services"

EXHIBIT 2
DATE 1-14-91
HB 24

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

January 14, 1991

TESTIMONY IN SUPPORT OF HB 24
AN ACT ESTABLISHING BEST INTEREST OF CHILD IN ADOPTION

Submitted by Betty Bay
Department of Family Services Adoption Specialist

The Department of Family Services supports HB 24 which will allow the Department, as well as the child-placing agencies licensed in Montana by the Department, to consider age, marital status and religion when placing children for adoption. In 1988, the Human Rights Commission found the Department guilty of discrimination because we had considered these factors when placing infants into adoptive homes. We believe we must be able to consider age, marital status and religion if we are to insure the best interest of the child.

Many birth parents insist upon having input into who will parent the child they give birth to. The Department has found that many birth parents will not consider relinquishing their child if they are unable to participate in the selection of adoptive parents. We believe that some birth parents are now resorting to their own methods of finding adoptive homes so they can have access to more information about the adoptive parents. This does not serve the best interests of the children because the parents are choosing adoptive families without the guidance and protection of adoption professionals.

VISITORS' REGISTER

House Judiciary COMMITTEE

BILL NO. HB #24, 25, 26 DATE 1-14-91

SPONSOR Rep. Cody

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
BETTY BAY	HELENA	✓	
Marilyn McKibben	Helena	✓	
KENNETH GROVE	GREAT FALLS	✓	
Lisa Payne/MT Women's Lobby	Helena	✓	
BILL DRISCOLL	Helena	✓ HB24 Waive Hearing	
LINDA SARGENT Montana Right to Life	HELENA	✓	
D. Mark Ricks	Helena	✓ HB 24 25 26	
Scott Crichton	HELENA	24	✓
Karen Northey	Helena	✓ 24 25 26	
JERRY WELLS	Helena		✓
Faye Bergum	Helena		✓
Sister Marie Noel Brush	Helena	✓	
~~Candace Hemmer~~	~~Helena~~		
Wenonah & Gordon Peterson	G.T. Falls	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 17, 1991, at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB #114

Motion: **REP. BROWN MOVED HB 114 DO PASS.**

Motion/Vote: **REP. BROWN** moved to amend HB 114 with the amendments proposed by the Mental Health Division from the Department of Institutions. Motion carried.

Motion: **REP. BROWN MOVED HB 114 DO PASS AS AMENDED.**

HEARING ON HB #72
EXPEDITE CRIMINAL PROSECUTION

Presentation and Opening Statement by Sponsor:

REP. J. RICE, HOUSE DISTRICT 43, stated this bill provides speedy resolution of misdemeanor criminal cases attempting to move cases through the system more quickly by limiting the time the defendant charged with a misdemeanor can be held in the jail. Overcrowding is a problem for most every jail in the state. The purpose of this bill is to address, in part, the problem of overcrowding and it address those categories that are not felonies. Those people being held in jail pending trial. I have requested some amendments and will go over them with the committee. **EXHIBIT 7**

Proponents' Testimony:

Mike O'Hara, Assistant Administrator, missoula County Detention Center, gave written testimony in favor of HB #72. **EXHIBIT 8**

Mike Schafer, Yellowstone, stated they support this bill because they support any legislation that will help speed up the system and limit the number of people held in jails at one time. Overcrowding is an important issue and this bill should help solve the situation.

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked **REP. RICE** who does the bill contemplate? Would it be the release person or supervisor? **REP. RICE** said he doesn't think the bill contemplates any particular organization at this time. We are leaving it to the discretion of the judge and release people to see if their are organizations who could assist in being responsible.

Closing by Sponsor: none

EXECUTIVE ACTION ON HB #24

Motion: **REP. BROWN MOVED HB 24 DO PASS.**

Discussion:

REP. BROWN stated in the bill, as it was written and introduced, the language that everybody questioned that was inserted throughout the bill, "this section does not prevent the non-arbitrary consideration in adopting proceedings of relevant information concerning the type as listed in the sub-section" or whichever area it happens to be. What the language says is that whether you are the state or a private agency, you can deviate from the Montana Discrimination Statutes, but you can't do it in

arbitrary fashion. That applies equally to the private adoption agencies. It doesn't go far enough for the private adoption agencies. The amendments that the private adoptions agencies came up with is saying essentially, that none of the discrimination statutes apply to them. They say, we are a private adoption agency, whatever our policies and guidelines are, is the law as far as we are concerned and the amendment takes them out of any control by the state in terms of adoption as far as discrimination goes. If you adopt their amendment, you protect their ability to run their agency any way they see fit. I also have an amendment that I am going to offer to the existing bill, I am going to oppose the private adoption agency amendments. I believe that we do not want to encourage discrimination anymore than necessary. In this area, they have a need for some necessary discrimination. I believe that area in the first amendment regard, is religion and not any place else. I intend to offer language, after each section where the underlined language appears in the original bill, that says "consideration of religious factors by a licensed child placing agency that is affiliated with a particular faith is not arbitrary consideration of religion, but in the meaning of this subsection". It specifically exempts religion as a factor, protects the private adoption agencies that are religiously affiliated, and allows them to be able to discriminate within their religion.

Motion/Vote: REP. BROWN moved to amend HB 24. (Refer to Standing Committee Report) Motion carried 18 to 2 with Rep's: Boharski and Messmore voting no.

Discussion:

REP. TOOLE stated the State not be allowed discrimination in any manner and maybe we could amend Rep. Brown's amendment to include this.

Motion: REP. BROWN MOVED HB 24 DO PASS AS AMENDED.

Discussion:

REP. BROWN stated his amendment is only as it relates to private adoption agencies having the ability to use religion in a discriminatory fashion. With the committees agreement, that amendment did include addition of whatever words John MacMasters thinks is necessary just to limit that to foresee to the state.

John MacMaster stated in page 2, line 17, after (c) "if the department or a licensed child-placing agency that is not affiliated with a particular religious faith is the child-placing agency."

REP. WHALEN asked if we need to add anything to the amendment we have already adopted? If we start fooling around with it we may make it less clear.

REP. LEE asked if we are going to do an amendment on removing age restrictions? **REP. BROWN** stated with the adoption of his amendment, age is governed under the non-arbitrary rule.

Motion/Vote: **REP. BROWN** moved HB 24 be amended. (Refer to Standing Committee Report) Motion carried.

Motion/Vote: **REP. BROWN MOVED HB 24 DO PASS AS AMENDED.** Motion carried.

ADJOURNMENT

Adjournment: 11:10 a.m.

Bill Strizich, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 17, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/	/	
REP. VERNON KELLER	/	/	
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

-157 HM
1-17-91
SDB

HOUSE STANDING COMMITTEE REPORT

January 17, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 24 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 9.
Strike: "NONARBITRARY"

2. Title, line 10.
Strike: "RELEVANT"

3. Page 2, line 17.
Following: "(c)"
Insert: "if the department or a licensed child-placing agency that is not affiliated with a particular religious faith is the child-placing agency,"

4. Page 3, line 4.
Following: "parents."
Page 3, line 19.
Following: "(1)."
Page 5, line 22.
Following: "subsection."
Insert: "Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section."

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0011	1/17	1/25		CONCUR		1/28
PAVLOVICH, BOB			REPEALING SUNSET PROVISION FOR VETERANS' EMPLOYMENT PREFERENCE			
HB0024	1/24	1/30		CONCUR AS AMENDED		2/15
CODY, DOROTHY			ALLOW CONSIDERATION OF AGE, MARITAL STATUS, AND RELIGION IN ADOPTIONS			
HB0025	1/21	1/30		CONCUR		2/06
CODY, DOROTHY			REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS			
HB0026	1/25	1/30		CONCUR AS AMENDED		2/07
CODY, DOROTHY			REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS			
HB0043	1/18	1/24		CONCUR AS AMENDED		1/25
COBB, JOHN			CLARIFY GRANDPARENT VISITATION RIGHTS FOR CHILDREN IN FOSTER CARE			
HB0069	1/18	1/30		CONCUR AS AMENDED		2/05
WHALEN, TIM			REVISE ESTABLISHMENT, NUMBER, SALARY, ELECTION OF MUNICIPAL COURT JUDGES			
HB0071	1/28	2/06		TABLED ON 02/18		
STRIZICH, BILL			REQUIRE COURTS TO ORDER FINANCIALLY ABLE INMATES TO PAY INCARCERATION COSTS			
HB0072	1/29	2/07		TABLED ON 02/26		
RICE, JIM			EXPEDITE CRIMINAL PROSECUTION			
HB0094	1/15	2/04		TABLED ON 02/06		
BROWN, JAN			CLARIFY PROCEDURE FOR REPRINTING MCA			
HB0101	1/29	3/06		CONCUR AS AMENDED		3/06
RUSSELL, ANGELA			SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 30, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Robert Brown (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 24

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, provided a short history of House Bills 24, 25, and 26. She said former Senator Tom Rasmussen had a bill in 1989 to get the Department of Family Services (DFS) into the adoption business. Representative Cody told the committee the adoption issue was studied and it was found that DFS had quit doing them because of a September, 1988 ruling, Wheeler v Department of Family Services.

Representative Cody stated she went to the Committee, asking them to kill Senator Rasmussen's bill, and proposed to draft a study resolution to address the issue of adoption in the state of Montana. She explained that the resolution was second on the list, but during Special Session the funds were given to education. Representative Cody advised the Committee that Valencia Lane, Staff

Attorney, did the study and found the issue to be much bigger than was thought.

Representative Cody said HB 24 is a big bill, and establishes the best interests of the child as a standard. She said the point is to find the best home for a baby and not a baby for a home.

Representative Cody explained that natural birth mothers have no constitutional rights once they relinquished their baby to the state. She showed the Committee a copy of the study by Valencia Lane ("The Rights of Birth Parents and Adoptive Parents and the Best Interests of Children: A Look at Adoption Services in Montana - December 1990"), and suggested they all read it.

Representative Cody read from page 14 of the report, concerning the Wheeler case, and asked whether the mother does indeed lose all rights. She stated relinquishment is such a traumatic, emotional thing for young women, and that she believes those mothers should have some say in the transition of giving their babies up for adoptions. Representative Cody explained there are two phases in determining initial eligibility, and that age, marital status, and sex may be addressed in the beginning, but not in the final stages.

Proponents' Testimony:

Representative Dave Brown, District 72, told the Committee the House Judiciary committee took a while to understand the arbitrary applications of the bill. He explained that private agencies came in with a lot of amendments, particularly with regard to religion. Representative Brown said these amendments would set those agencies aside from the general provisions of the bill.

Representative Brown stated the House Judiciary Committee added language on page 3, line 25 to the top of page 4, allowing for discrimination based on religion. He said the Committee believed the Constitutional right of freedom of religion will cover the language, but no other form of discrimination was allowed.

Representative Brown said the House Judiciary Committee believed there was a clear need for state adoptions, as low income families can be served by DFS. He asked to be excused to return to the House Judiciary Committee meeting.

Bill Driscoll, Helena attorney representing Catholic Social Services, told the Committee he had also been in contact with LDS (Latter Day Saints) and Lutheran Social Services. He stated he believes it is a good idea to get DFS back in to adoption, and that the House Judiciary Committee amendment goes a long way toward addressing private agency adoption concerns.

Mr. Driscoll advised the Committee that marital status is a criteria for LDS Social Services, and is a matter of religious teaching and doctrine. He said he understood Lutheran Social

Services has a similar philosophy, but without the doctrine, and that it is not a great concern with Catholic Social Services. He added that the amendments proposed in House Judiciary would have more clearly separated church and private agencies from DFS.

Mr. Driscoll stated that in Valencia Lane's report, 80 percent of adoptions were non-agency placements. He said the problem private agencies face if they are bound by the same rules as DFS, is that, essentially, they must tell the birth mother they can't accommodate her wishes. He advised the Committee that in direct placement, birth mothers can discriminate.

Mr. Driscoll told the Committee he was concerned that if birth mothers can't be told the age, sex, and marital status of prospective parents, they will be encouraged to use direct adoption. He said he believes young women should not be discouraged from going to private placement agencies.

Mark Ricks, LDS Social Services, said he favored the bill. He told the Committee their primary client is an LDS birth mother who is active in requesting and expecting to participate in selection of adoptive parents. He said he believes birth mothers need to be selective, and that it is their right to look at the age, marital status, and sex of adoptive parents. He explained that the adoptive parents pay a fee for the services which are funded by the church.

Linda Fagengstrom, Lutheran Social Services, stated less than one in ten young women make the choice of adoption. She read from a prepared statement in support of the bill, and said Lutheran Social Services maintains a continual relationship with the adopted child.

Ms. Fagenstrom told the Committee that 80 percent of birth mothers who go on welfare are still on welfare ten years later. She stated that nine in ten of these mothers soon have a second pregnancy. She said she believes birth mothers should be able to choose a guardian, but as other parents do for their children in their wills.

Mr. Fagenstrom added that birth mothers don't choose single parent families, and said they need to be allowed to continue to be involved with adoptive families through anonymous pictures and letters.

Ann Gilkey, DFS, expressed her appreciation to Valencia Lane for the study, and to Representative Cody for her work on the bills. She said DFS supports the bills and the amendment allowing consideration of age, marital status, and religion. Ms. Gilkey stated DFS feels strongly the need to consider these factors.

Ms. Gilkey explained DFS had received a letter from the Human Rights Commission regarding a declaratory ruling on whether private agencies would be affected by Wheeler, since DFS licenses those

agencies. She stated DFS feels this legislation is very important to protect the private agencies and for the Department in beginning adoptions again. She added that she believes mothers will not use private agencies or DFS if the bill is not amended. Ms. Gilkey urged the Committee to support the bill.

Rebecca Jones, Director, Shodair (Montana Children's Home), told the Committee she had been with Shodair for 18 years. She stated that in reviewing files of mothers relinquishing some years ago, they asked about family and mentioned the type of family they would like for their child. Ms. Jones stated that 90 percent or more mothers are suggesting a family.

Linda Sargent, Montana Right to Life, said she believes these bills promote the best interest of the baby, birth parent(s) and adoptive parents. She encouraged the Committee to keep in mind the furthering of the adoption process.

Opponents' Testimony:

There were no opponents of HB 24.

Questions from the Committee:

Senator Svrcek said he was confused regarding the status of the bill in testimony given by Representative Dave Brown and Bill Driscoll. Representative Cody replied that, during the study the private agencies were involved, but their attorneys were not apprised and only became interested when the bill draft was requested. She said she understood the concerns of the private agencies, but House Judiciary chose to address private agencies, based only on religion. Representative Cody reported the study says the classification on marital status falls into the category of the rational basis test. She stated it is unclear whether private adoption is actually state adoption.

Senator Halligan asked what the best interest of the child are if a family of a different religion meets more eligibility requirements. Representative Cody replied there probably won't be this problem with DFS, as such issues will already have been discussed.

Senator Halligan said he has been terminating parental rights for the past five years, and that there is lots of opportunity for mischief if an abusive parent is given that much power. Representative Cody replied the bill only addresses birth mothers. Ann Gilkey responded that DFS will consider a mother's wishes, but the social worker will make the determination in the best interests of the child.

Senator Halligan stated he was concerned with conditional relinquishment. Ann Gilkey replied DFS won't take conditional relinquishments.

Senator Crippen, asked Anne MacIntyre, Human Rights Commission, Department of Labor, if HB 24 will solve the discrimination problem. Ms. MacIntyre replied the Commission has no position on the bill, but has concerns with the use of "non-arbitrary". She said the term was amended out of the title, but is still in the bill on pages 4 and 5. She stated that with respect to religious discrimination, she was "not certain she agreed it is rational basis and it might by strict scrutiny".

Ms. MacIntyre stated the bill specifically says that where a birth mother has a particular issue, she can have some say in. She said nothing particularly applies to private adoptions, but statute says licensed agencies are to carry out the intent of the law.

Senator Towe asked Bill Driscoll what proposals were not added by the House Judiciary Committee. Mr. Driscoll replied he believed private agencies could be subject to discrimination complaints if litigation were non-arbitrary. He said this would put private agencies out of business. Mr. Driscoll stated that when one looks at what private agencies do, there is misdirection as to whether that is a state action or not.

Senator Towe asked Mr. Driscoll if he agreed with Valencia Lane's statement that religion can be one factor to be considered. Bill Driscoll replied he believes that "without it LDS and Lutheran Social Services would be out on a limb". He said Catholic Social Services does not confine its list to just Catholics.

Senator Towe asked if the bill were saying that it would be in the best interests of the child to give it to the wealthiest parents. Representative Cody replied she did not believe that, and said the state should not be in the business of finding children for families.

Senator Doherty stated that race is strict scrutiny, sex is mid-scrutiny, and marital status is rational basis. He asked what the compelling reason is to promote involvement of these private agencies, of they were going to "blink" on any on factor. Linda Fagenstrom, Lutheran Social Services, replied the prospective parents are educated, and said she believes the compelling interest is to allow this education, non-biased information, and these values to best prepare families.

Senator Doherty asked if there were any data showing problems later on. Ms. Fagenstrom replied she has had hospitals call her to represent the birth mother concerning direct placements.

Closing by Sponsor:

Representative Cody waived closing until House Bills 25 and 26 were also heard.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 30 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	E		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

DATE

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Ann Gilkey	Dept. Family Services	HB 1, 25, 26	X	
Larry Herman	Natural City Council	69	X	
BETTY BAY	D.F.S.	24 26 25	X	
Syd Brownfield	Self	24, 25, 26	X	
PAT BRADLEY	MT MAGISTRATES ASSN	HB 69		X
D. Mark Ricks	LDS Social Service	HB 24 25 26	X	
Bruce McCandless	City of Billings	HB69		
Linda Fagerstrom	Lutheran Social Services	HB 24 26	X	
Marilyn J. McKibben	Catholic Social Services	24, 25, 26	X	
DAVE BROWN	State Rep.	HB 24	X	
Kid Russell	Catholic Social Service	HB24	X	
Rebecca Jones	Shodair (Montana Children's	HB 24	X	
Kid Russell	Montana Right to Life Assn	HB 24	X	
	Catholic Social Services	HB26		X
Lonnie Peterson	MT Intercountry Adoption	HB 24 25	X	
"	"	HB 26	X Like Bill HB Needs	X Like Needs

23

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 14, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Bruce Crippen (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SENATE BILL 246

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, advised the Committee tort reform legislation, passed in June 1986, set limits on government liability at $750,000 per claim and $1.5 million per occurrence for economic and non-economic damages for a period of five years. He said this legislation is due to sunset, and the bill would put it into statute. Senator Nathe said there have been no problems with the limits during the past five years.

Proponents' Testimony:

Bret Dahl, Administrator, Tort Claims, Department of Administration (DOA), said he supported the bill which reenacts present limits, effective July 1, 1991.

Senator Towe said he wanted to underscore Chairman Pinsoneault's concerns that each member of the Committee read all the testimony and the Harkin findings, and be prepared to answer questions from the public. Chairman Pinsoneault added that, "although we make mistakes, we are human".

Senator Rye stated he was bothered by the letter from Judge Purcell's secretary, and said he thought Mr. Purcell "danced around Senator Halligan's question". Senator Halligan added that he still has strong concerns with how the Judge treats "the little people", and said he believes there is credibility in what the secretary said in her letter. He said he is trying to focus on judicial temperament.

Chairman Pinsoneault advised the Committee he had growing concerns.

EXECUTIVE ACTION ON HOUSE BILL 24

Motion:

Discussion:

Senator Towe reminded the Committee that Senator Doherty's amendments failed, and that he was proposing amendments to clean up language in the bill. He said Department of Family Services (DFS) language would be deleted from page 2, lines 17-19, and language allowing religion as ethical development and because of natural parent preference, would be inserted on page 2, line 21. He said non-arbitrary language would remain in the bill, and the title would be cleaned up accordingly.

Valencia Lane advised the Committee that the changes in the title and the body of the bill are more substantial and not merely clean up. She said changes to discrimination law factors include things other than age, and marital status.

Ms. Lane told the Committee she is not entirely opposed to the way Senator Towe would amend religion. She stated the bill is an attempt to allow DFS to treat religion the same way as private agencies do, in a non-arbitrary manner. Ms. Lane commented that the Towe amendments say religion can't be considered until it comes into focus when a request is made by the birth mother.

Valencia Lane explained the amendments should narrow the scope of the original draft, and said the Towe amendments are better than no bill at all. She did state that she was concerned with determining best interests of the child on page 2, and asked the Committee to look at the proposed change to page 5, lines 13-16. Senator Towe replied it was not his intent to make this change, and that it would be best to leave this portion of the bill alone.

Amendments, Discussion, and Votes:

Senator Towe made a motion that amendments 2 and 3 of his proposed amendments be approved (Exhibit #3). Senator Grosfield asked Senator Towe to include changing "natural" to "birth" parent in his motion, to which Senator Towe agreed.
The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 24 BE CONCURRED IN AS AMENDED.

Senator Svrcek said he had no problem with private agencies using religion as criteria, but had concerns with "blinking" at religion by DFS. Senator Towe replied he is saying religion can be considered as it relates to the ability to provide for spiritual or religious and ethical development. Chairman Pinsoneault added that he believes this is in the best interest of the child.

Valencia Lane advised the Committee that DFS used sloppy procedures in the case mentioned during the hearing of HB 24 where the adoptive family was Church of God. She said she believes religion is important and should be considered, and that spiritual and ethical development is more important than religion. Ms. Lane stated she did not want this to be a bill allowing discrimination in religion, but to look at the consideration of religion in a non-arbitrary manner.

Senator Towe's motion carried 11-1 with Senator Yellowtail voting no.

ADJOURNMENT

Adjournment At: 12:00 noon

Dick Pinsoneault
Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

JU021491.SM1

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 14 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen			
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 15, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 24 (third reading copy -- blue), respectfully report that House Bill No. 24 be amended and as so amended be concurred in.

1. Page 2, lines 17 through 19.
Following: "(c)" on line 17
Strike: remainder of line 17 through "AGENCY," on line 19

2. Page 2, line 21.
Following: "development"
Insert: "and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination"

3. Page 3, line 5.
Following: "of"
Strike: "natural"
Insert: "birth"

Signed: [signature]
Richard Pinsoneault, Chairman

2-15-91
Amd. Coord.

2-15 12:25
Sec. of Senate

350950SC.Sji

Exh. 3
2-14-91
HB 24

Amendments to House Bill No. 24
Third Reading Copy (Blue)

For the Committee on Judiciary

Prepared by Valencia Lane
February 15, 1991

1. Page 2, lines 17 through 19.
Following: "(c)" on line 17
Strike: remainder of line 17 through "AGENCY," on line 19

2. Page 2, line 21.
Following: "development"
Insert: "and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination"

3. Page 3, line 5.
Following: "of"
Strike: "natural"
Insert: "birth"

HOUSE BILL NO. 24

INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE ~~NONARBITRARY~~ CONSIDERATION IN ADOPTION PROCEEDINGS OF ~~RELEVANT~~ INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Adoption policy -- best interest of child standard -- factors to be considered.** (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) ~~IF--THE--DEPARTMENT--OR--A--LICENSED--CHILD-PLACING AGENCY--THAT--IS--NOT-AFFILIATED-WITH-A-PARTICULAR-RELIGIOUS FAITH-IS-THE-CHILD-PLACING-AGENCY,~~ religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development AND AS IT RELATES TO THE EXPRESS PREFERENCE OF A BIRTH PARENT TO HAVE A CHILD PLACED WITH OR THE EXPRESS PREFERENCE OF A CHILD TO BE PLACED WITH ADOPTIVE PARENTS OF A PARTICULAR RELIGIOUS FAITH OR DENOMINATION.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of ~~natural~~ BIRTH parents relating to the age, marital status, or religious beliefs of adoptive parents. CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF THIS SECTION.

Section 2. Section 49-1-102, MCA, is amended to read:

"**49-1-102. Freedom from discrimination.** (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right ~~shall~~ must include but not be limited to:

~~(1)~~(a) the right to obtain and hold employment without discrimination; and

~~(2)~~(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF THIS SECTION."

Section 3. Section 49-2-308, MCA, is amended to read:

"**49-2-308. Discrimination by the state.** (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

~~(1)~~(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

~~(2)~~(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage

of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

~~(3)~~(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 4. Section 49-3-204, MCA, is amended to read:

"**49-3-204. Licensing.** (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or

mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF THIS SECTION.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 5. Section 49-3-205, MCA, is amended to read:

"49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed

without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

NEW SECTION. **Section 6.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [section 1].

NEW SECTION. **Section 7.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are

severable from the invalid applications.

NEW SECTION. **Section 8.** Effective date. [This act] is effective July 1, 1991.

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